

## **Mid-America Environmental Compliance Conference**

### **“A Regional View of Environmental Compliance,**

### **Now and Into the Future”**

Overland Park Marriott - April 3, 2014 – **As Delivered**

By Karl Brooks, EPA Region 7 Administrator

Thanks KC Chamber and its many partners, Roger Walker and REGFORM. State environmental agency counterparts. Local government infrastructure managers, attorneys, consultants.

The planners of this conference have involved EPA Region 7 right from the start. A lot of us Region 7 staff will be on various panels throughout the next two days. We appreciate the chance to help shape the conversation. And we appreciate the level of professionalism and common purpose that actuate this meeting.

Reminds me of something Administrator McCarthy told Region 7 when she visited us back around Thanksgiving. Someone in the crowd during the all-hands asked, “Are you scaling back on enforcement at EPA?”

She paused for a moment and said, “Enfahsment still mattahs. Of caws it does.” But then she went on to ask a more than rhetorical question that we in Region 7 have been considering since then: “Why is it,” Gina mused, “that

whenever I read about EPA enforcing the law, the headline always includes the dollar amount of the penalty?”

Since her visit, I’ve been encouraging our Public Affairs staff to dig deeper into enforcement matters resolved by Dave Cozad’s team. Sure, many of them do conclude with, among other features, a fine or penalty.

But that is never the whole story. Nor should it be: Region 7 discharges our enforcement responsibilities from this mindset: COMPLIANCE WITH THE LAWS IS THE GOAL – ENVIRONMENTAL QUALITY IS THE RESULT FROM REACHING THAT GOAL – AND ENFORCEMENT IS ONE TOOL TO ATTAIN THE GOAL AND TO ACHIEVE THE DESIRED RESULT. Through our enforcement work, we can and do drive compliance that results in healthier and cleaner communities where people live, work, and play. We send important deterrent messages, and we make sure that those who don’t play by the rules do not gain an unfair competitive advantage.

But we know, and independent research tells us, that we need more than enforcement alone to improve and significantly alter long-term environmental protection outcomes. By the same token, both independent research and the evidence around us establish that neither altruistic companies nor crusading governments -- acting alone -- have moved the needle toward sustainable environmental quality – and kept it there.

Instead, as you in this room – who have dedicated your professional and public-service careers to environmental quality – know: effective solutions will arise when policy rewards innovation, when policy stimulates creative business and public management, and when the marketplace and the ballot box reinforce the pursuit of private-sector economic opportunity and responsible long-range public infrastructure investment and operation.

James Madison, my favorite Founder, once observed drily, “If men were angels, neither governments nor laws would be needed.” I like many of you, and respect all of you: but you’re not angelic. Neither are we. That’s why short-run reliance on a narrow-gauge strategy -- either rarified corporate conscience or punitive regulatory fiat -- simply won’t get America, or the great Heartland, where we need to be in the long-run.

We make public policy and private sector decisions in an era measured by RESULTS. Executive-branch agencies, such as Region 7 and our state partners, understand fiscal reality: our vital work protecting human health and the environment will go on with fewer FTEs. Local governments, those closest to the taxpayer, definitely have to stay aligned with citizens’ demand to justify every penny of public investment. And the private sector has understood this hard lesson for a generation now: the markets love innovation, and they punish complacency.

So let me suggest some ways in which environmental enforcement will operate in the “Next Gen.” That phrase -- “Next Gen” – you will hear it a lot today. You’ll hear it a lot from Administrator McCarthy and Cynthia Giles, who heads EPA’s Enforcement and Compliance Assurance effort. And you’ll see that it’s an invitation to think together more than a nifty new marketing slogan.

First, environmental compliance will increasingly rely on new monitoring technology and data analysis to drive innovative environmental advances.

Next, environmental enforcement will have to focus strategically by tackling the hardest, most important problems. That’s why OECA’s national enforcement initiatives will remain our “true north” through 2016. And Region 7’s team will do our part, along with partners in state government, to seize the biggest opportunities to improve the lives, health, and opportunities of real people making their homes in real communities.

Third, experiences with compliance strategies that set legal standards but allow permittees to decide how best to get there offer simple, effective models in the proper settings. It worked to cut acid rain: recall this? -- an integrated system of pollution allowances, continuous monitoring, electronic reporting, and market trading got fast results, efficient solutions, and very high compliance.

So how might a “Next Gen” world work?

Next Gen's goals are: improving compliance, cutting pollution, and focusing EPA enforcement staff on the most complicated environmental-quality problems. Sounds great, but what happens to more routine enforcement? That's where thoughtful design comes in.

EPA and our partners will need to design smarter programs. New rules that capture the smarter design should build in more powerful compliance drivers. What's a compliance driver? Examples include: transparency, market systems, and third party auditing. Research suggests regulatory compliance drivers in retooled programs will boost compliance overall AND realize more environmental benefits by reinforcing compliance than by stressing enforcement.

Study the acid rain program, suggests Professor Brooks: Its combination of very clear compliance requirements, advanced monitoring to show what actually happened, electronic reporting, and transparency produced effective compliance as well as reliable knowledge about compliance status. That required less enforcement attention to get the desired pollution reductions.

Why should permittees welcome advanced monitoring? Results! Control! Faster improvements! The Next Gen approach will adjust this agency's programs to more commonly include evaluation metrics so both the EPA and permittees know how well a rule is achieving intended results. More knowledge about results,

more control. More control, faster adjustments in both regulatory program design and facility management.

Now monitoring creates data. And to be useful, data must be both fast and right. Next Gen will require program integrity, both to ensure public confidence and to realize gains for both permittee efficiency and environmental benefit. Mere self-reporting could tempt facilities down the slippery slope of inaccurate or incomplete reporting. Next Gen implies rigorous systems that find and prevent data violations or third-party book-cooking. Information we can rely on: that's the objective.

These risks have always been there. But as Next Gen relies even more on facility reporting, the need for system integrity rises. The more environmental compliance depends on data, the more that incentives to fudge the numbers must be discouraged.

Innovative managers in the public and private sector already know that integrity moves at data speed. Data should reward innovation. And innovators are already realizing how to multiply data's power.

So-called "Big Data" approaches that empower managers to make smarter short- and long-run decisions can also help both regulators, citizens, and the permittee community **spot trends** that deserve investigation and disincent cheaters. When data offers a permittee so much, that data must be sound. As both investors

and regulators learned over three generations ago with securities markets, bad numbers deserve swift, certain punishment. Perhaps criminal enforcement will need to focus more on reported environmental results in Next Gen, simply because the integrity of so many environmental-quality objectives will depend on them.

Next Gen tools promise something all taxpayers should celebrate: reduced government workload because electronic reporting, data transparency, and third party audits can replace mundane, routinized form-completion, review, and filing.

Transparency isn't merely a slogan at the Environmental Protection Agency.

Using transparency to improve performance is one of the most important insights emerging from the literature on environmental compliance. Research suggests that transparency serves a reminder function:

- # Publishing data on facility performance draws attention to problems

- # It brings senior-level focus to fix them.

- # It reinforces peer pressure. Seeing how peers perform can both confirm that better performance is possible — “Hey, they’re doing it” — and provide competitive incentive to improve — “Why not us?”

- # Competition benefits from transparency: Some firms believe their stronger performance reflects sharing more information with the public because it rewards winners.

#Disclosure by transparency also ups the pressure on laggards. Research shows how the desire to avoid bad press, regulatory scrutiny, or market disdain motivates better performance. When investors and insurers see evidence of poor management, the laggard pays. Avoiding environmental violations can save money.

Next Gen doesn't mean "Next Day." Although Administrator McCarthy and Cynthia Giles are dedicated, they are also realistic. Developing regulations that deploy compliance drivers happens gradually. EPA's state partners and contractors must be consulted. And the permittee community should expect that new policies encouraging innovation be tested before wide-scale implementation.

We know a lot about what drives compliance so we have to use that knowledge to structure programs that will work better. We must design rules that will work in the real world - rules with compliance built in.

That's true as well for IT systems to support advanced monitoring and electronic reporting. Agency enforcement leaders have secured budget authority to expand advanced monitoring tools into the field. Region 7 is assured more are coming.

Training in advanced monitoring equipment is also essential. Next Gen demands skills like data analytics, IT, and statistical analysis, plus engineering expertise. I'm optimistic we can attract these new talents: innovating across



economic sectors and agency programs will make Region 7 a cooler place to work. And our staff will do less routine stuff and more work that requires professional judgment to tackle the hardest, but the most important problems impeding environmental quality.

My colleagues at EPA and I know: states remain on the front lines, even in the “Next Gen” era. Next Gen and “E-enterprise: – the agency’s push to collect and share more environmental compliance data electronically – require intense collaboration. But the payoff should reward state participation: better, more complete pollution and compliance information will focus shared federal/state effort on those sources that plainly aren’t doing the job. Being more sophisticated with our data and more creative with our technology will put better information into our environmental-compliance system and get more useful management information out.

Next Gen should help EPA and the states really assess the value of our enforcement programs. Numbers of cases, dollars of injunctive relief, defendants charged, pounds of pollution reduced, or contaminated media cleaned up are all relevant and important. But remember Administrator McCarthy’s admonition at Region 7?!

Disparate hills of beans may not reveal the field’s actual output. Knowing the compliance “rate” for key industrial or utility sectors, seeing how much

pollution exceeds legal limits – these may supply more compelling metrics for managing enforcement work than simply tabulating case counts.

These metrics will also point Region 7 and the states toward phases of our joint work that need more attention, as well as phases that are strong enough to obviate the mechanical application of persistent and persnickety EPA reviews.

Measuring compliance better will also more clearly illuminate the important effects of the deterrence principle. As EPA moves into the “Next Gen” era, we remain mindful of the importance of our overall deterrence message. It is dangerous for anyone, especially in industry, to have the impression that the environmental cop is not on the beat. For that and other reasons, we need to keep an eye on the numbers and not allow a story that we are less vigilant to have a basis in fact.

Perception can be reality in compliance, so perception matters. As we develop more robust measures, and have more data that tells a compelling story, case counts alone won’t be the only metric that people outside the agency use to gauge our seriousness of purpose.

Our criminal work will benefit from the advanced monitoring tools being developed. Big data approaches to identifying possible criminal violations for problems that matter is an untapped but potentially powerful tool.

We will need to develop the capacity to take advantage of these tools, recognizing that looking for criminal activity requires a different approach than is used for civil targeting.

So, I hope you see how the “Next Gen” era will work to mutually reinforce all our efforts, in every sector of the environmental protection enterprise. Much of the Next Gen architecture depends on national action, driven at the headquarters level. But we in Region 7 are doing our bit.

We intend to expand the use of Next Gen in enforcement settlements in the coming years. There are ways to get things done more quickly without new rules; we just have to shift our paradigm, experiment with new approaches and learn from them.

We intend to help regions develop common approaches across the country. Sharing best practices and new ideas across regions will get more done with limited resources. In fact, within the last two months, Dave Cozad and DeAndre Singletary’s team have met with enforcement leadership from all the regions to share collaborative ideas on several fronts. Both judicially and administratively, by program and issue, the Next Gen approach will vary. But regional consistency will prevent new problems that the agency does to itself – and that some defendants would certainly exploit. How to best obtain national consistency, on

what issues it is essential, and the most efficient way to be consistent: all these topics are under active agency discussion.

Administrator McCarthy has directed Region 7 to do our work to benefit communities where real people live, work, raise families, and invest. And so community benefit will be a prime enforcement objective: that's why she challenged me – and Region 7's enforcement and public affairs teams – to communicate the results and objectives of enforcement beyond simply headline dollars.

Our work must enhance the livability and economic vitality of neighborhoods in and around brownfields sites; we must strengthen our relationship with America's industrial community; support green infrastructure to improve urban waters; reduce air pollution along roads and rails; and use better science and enhanced community engagement to protect our neighbors' fundamental rights to environmental justice.

Compliance is the Goal: Enforcement is Only one Tool. When our environmental laws are observed, internalized, enforced, incented, and embraced – then the benefits to Heartland communities and to the American economy become more understood, and supported, and rewarded.

We all will have a stake in this venture: environmental protection is, as Bob P always says, “an enterprise.” Though my dedicated, professional colleagues in EPA Region 7 play a large role in this enterprise, we cannot, will not, and should not do it alone.